



**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

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Order Instituting Rulemaking on the  
Commission's Own Motion into the Service  
Quality Standards for All Telecommunications  
Carriers and Revisions to General Order 133-B.

Rulemaking 02-12-004  
(Filed December 5, 2002)

**OPENING COMMENTS OF  
CBeyond COMMUNICATIONS, LLC (U 6446 C)**

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Dated: May 14, 2007

Pursuant to the Assigned Commissioner's Ruling and Scoping Memo ("Scoping Ruling")<sup>1</sup> and the Administrative Law Judge's ruling extending time,<sup>2</sup> Cbeyond Communications, LLC ("Cbeyond") (U 6446 C) hereby timely files these Opening Comments. Cbeyond respectfully submits that imposing new service quality standards or reporting requirements is unnecessary to protect CLEC customers, and would be inefficient and unduly burdensome. As discussed in detail below, Cbeyond requests that the Commission decline to impose service quality standards or measurements for CLECs' business services, and that the Commission decline to require CLECs to collect data and submit customer satisfaction surveys for those customers. Both of these requests are warranted by the record in this and other related proceedings.

**I. The Commission Should Not Impose Service Quality Requirements On CLECs For Business Customers**

The Scoping Ruling notes that the record in this proceeding supports limiting service quality measures to basic local exchange access line service.<sup>3</sup> To the extent that the Commission intends to limit the scope of this proceeding to residential local exchange services, Cbeyond strongly agrees. Such approach correctly focuses the Commission's oversight resources on the group of customers least able to choose a competing carrier. In the Commission's most recent report to the California legislature on the state of the telecommunications market, the Commission determined that the ILECs in California had an overwhelming 94% share of the local residential market statewide, compared to the CLECs' 6% market share, and the ILECs received 97.8% of the local residential

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<sup>1</sup> Assigned Commissioner's Ruling and Scoping Memo, March 30, 2007 ("Scoping Ruling").

<sup>2</sup> Administrative Law Judge's Ruling Granting Extension of Time to File Opening and Reply Comments, April 12, 2007 extended the deadline for opening comments to May 14, 2007.

<sup>3</sup> Scoping Ruling, at p. 3.

revenue.<sup>4</sup> The market for business services, however, is more competitive, with CLECs serving slightly more than 15% of the market.<sup>5</sup>

Because the level of competition in the market for business services is greater than residential, it is far more critical to monitor service quality for residential local exchange customers than for business customers. In addition to a greater likelihood of competitive choices, business customers have access to greater resources and technical expertise, and have substantially more bargaining power with which to resolve service quality concerns with carriers.

The Scoping Ruling asks parties to address whether differing levels of oversight may be applied to various services in light of the Commission's newly instituted goal of developing uniform levels of regulation among carriers.<sup>6</sup> Declining to expand service quality standards to include business customers of CLECs is appropriate, and consistent with, the Commission's goal. The marketplace reality is that some services are more competitive than others, and therefore have varying needs for regulatory oversight. As the Commission itself has acknowledged, a uniform regulatory framework should be developed only "to the extent that such a framework would be feasible and in the public interest."<sup>7</sup>

There is evidence that a lower level of oversight for business services is appropriate and would be in the public interest. In the New Regulatory Framework ("NRF") proceeding, the Division of Ratepayer Advocates ("DRA") agreed that reporting

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<sup>4</sup> *The Status of Telecommunications Competition in California, Third Report, For the Year 2003*, at p.16 [hereinafter cited as "*Third Report*"]

<sup>5</sup> *Third Report*, at p. 16.

<sup>6</sup> Scoping Ruling, at p.3.

<sup>7</sup> D.06-08-030, *Opinion, Order Instituting Rulemaking on the Commission's Own Motion to Assess and Revise the Regulation of Telecommunications Utilities*, at p. 13, 42.

requirements for all but the smallest business customers is unnecessary.<sup>8</sup> The same is true for service quality requirements, though Cbeyond believes that such requirements are unnecessary for all business customers. As the Scoping Ruling notes, the clear mandate of the California legislature, and Commission practice, is to intervene in the marketplace only in circumstances where the market cannot protect consumers.<sup>9</sup> Expanding the scope of service quality requirements to apply to CLEC business services would be contrary to this fundamental principle because business customers have the necessary resources to protect their own interests.<sup>10</sup> Thus, the Commission should decline to impose service quality requirements for business services provided by CLECs, and instead focus scarce resources on more vulnerable customers.

## **II. Annual Customer Satisfaction Surveys Are Not Needed For CLEC Business Customers**

Cbeyond respectfully submits that there is no need to impose a new requirement on CLECs to collect data and submit annual customer satisfaction surveys. While Cbeyond understands that any such surveys are expected to be funded through a customer surcharge, such requirement would not be costless for CLECs. Many smaller carriers do not have in place the systems and processes needed to carry out wide-scale customer surveys. Thus, CLECs would be required to spend scarce resources creating the administrative infrastructure necessary to canvass customers, compile data and submit reports to the Commission rather than developing new services and deploying new

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<sup>8</sup> R. 05-04-005, Comments of the Division of Ratepayer Advocates on Phase 2 Issues, March 30, 2007, at p. 7; Reply Comments of the Division of Ratepayer Advocates on Phase 2 Issues, March 30, 2007, at p. 16-17 (DRA agreed that reporting requirements, if any, should apply only to very small business customers who purchase five or fewer lines).

<sup>9</sup> Pub. Util. Code §709.5; D.06-08-030, at p. 32.

<sup>10</sup> Scoping Ruling, at p. 3.

facilities.<sup>11</sup> Further, the lag time associated with annual reporting would render the information virtually meaningless. By the time a carrier submits its annual report, a customer unhappy with service quality may well have “voted with his feet” by switching to a new carrier.

Customer satisfaction surveys are especially irrelevant for business customers. Such customers frequently purchase service via contract, which often include service quality requirements and penalties for failure to meet such requirements. Even in instances in which business customers purchase service pursuant to tariff, such customers have sufficient bargaining power and expertise to resolve service quality issues directly with their carrier.

Instead of imposing the cost of developing and managing a new reporting system on CLECs, the Commission should focus on more direct and immediate means of protecting customers’ interests. For example, the Commission could create a process on its website for customers to report on a virtually real-time basis when they experience service quality problems. The Commission would then have the necessary data to judge the performance of carriers, and also the means to facilitate rapid resolution of service quality complaints. Such approach would eliminate practical, technical and logistical issues related to the collection method, compilation, formatting and submission of customer satisfaction data from CLECs. It would also prevent the concerns raised in

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<sup>11</sup> Cbeyond does not take a position on whether ILECs should be required to submit annual customer satisfaction surveys. However, Cbeyond notes that ILECs already have in place operational processes and systems to collect and compile service quality data. See D.03-10-088, *Interim Opinion Regarding Phase 2B Issues Service Quality of Pacific Bell and Verizon California, Inc.*, Nov. 7, 2003, at p.133 (Pacific Bell’s witness in the NRF proceeding, Dr. Hauser, explained that Pacific has a centralized organization that collects data on an ongoing basis by surveying customers with recent service interactions with Pacific. A sample of the customers is surveyed by an independent marketing firm, Market Insights, every month, 7-10 days after the service event and asked about their interaction with the business office and network operations. These surveys are the source of data provided to the FCC in the ARMIS 43-06 reports. The survey results are also reported to the CPUC under the P.A. 02-04 reporting requirement.)

D.03-10-088 regarding the “regulatory drama” that arises from carrier failure to submit all relevant service quality data<sup>12</sup> and allegations that carriers have misreported, highly aggregated or otherwise manipulated data to mask unfavorable results.<sup>13</sup>

### **III. Conclusion**

For all of the foregoing reasons Cbeyond respectfully requests that the Commission decline to impose new service quality standards or measurements for CLECs’ business services, and that the Commission decline to require CLECs to collect data and submit customer satisfaction surveys.

Dated and Signed: May 14, 2007

Respectfully Submitted,

/s/Anita Taff-Rice\_\_\_\_\_

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<sup>12</sup> See e.g., D.04-12-024, Order Denying Application for Limited Rehearing of Decision 04-07-036, Denying Motion for Stay of Ordering Paragraph 14 of Decision 04-07-036, and Modifying Decisions 03-18-088 and 04-07-036, at p. 12 (“SBC’s hairsplitting over the meaning of [reporting requirements] . . . has obstructed this Commission’s ability to evaluate service quality and customer satisfaction, key issues in the NRF process, and has wasted many hours of Commission time.”)

<sup>13</sup> For example, the Utility Reform Network (“TURN”) and the Office of Ratepayer Advocates (“ORA”) both criticized the reliability of Pacific Bell’s service quality data submitted in the NRF proceeding. See D.03-10-088, Interim Opinion Regarding Phase 2B Issues Service Quality of Pacific Bell and Verizon California, Inc., Nov. 7, 2003, at p. 56-62, 160 for a discussion of concerns regarding Pacific Bell service quality data.